

**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

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RE: *IMO Bartrust, Bartrust II, and the Robert A. Raley Trust*
C.A. No. 11875-MA

Dear Counsel:

Pending before me is a motion for a *status quo* order filed by Petitioner Margaret Raley-Ward. For the reasons that follow, I recommend the motion be denied.

By way of background, Petitioner is a beneficiary of two family trusts,¹ and is seeking the removal of two of the three individuals who serve as co-trustees of these trusts. Petitioner accuses these co-trustees of self-dealing and the potential looting of the family's assets. Petitioner also accuses the trusts' accountant of aiding and abetting these co-trustees in their breaches of fiduciary duty. Additionally, Petitioner is seeking an accounting of the family trusts and a declaratory judgment that the second amendment to a limited liability company agreement is void.

Shortly after Respondents John Hall, Mary Ann Ryan, and James LaChall filed their response to the petition,² Petitioner moved for partial judgment on the pleadings, arguing that the co-trustees had been authorized to serve as co-managers

¹ The two family trusts are: (1) Bartrust, settled by Robert A. Raley in 1996, in which he named John Hall, Mary Ann Ryan, and Susan E. Hopkins as trustees; and (2) Bartrust II, settled by Robert A. Raley and his wife Susan G. Raley (hereinafter "Mrs. Raley") in 1998, in which they named Hopkins, Ryan, and Hall as trustees. Andrew H. Sauder's Transmittal Affidavit Supporting Petitioner's Motion for Partial Judgment on the Pleadings, Exs. A & B. Docket Item ("DI") 35. Both trusts refer to Hopkins as the Family Trustee, Ryan as the Division Trustee, and Hall as the Executive Trustee. In addition, there is a Declaration of Trust of Robert A. Raley that was settled by Raley in 2002, in which he named himself as trustee and Hall as his successor trustee. *Id.*, Ex. C. Following Raley's death on June 3, 2013, Hall divided the assets of the Robert A. Raley Trust into a marital trust and credit shelter trust pursuant to the language of the trust agreement. *Id.*

² Hall and Ryan are the two trustees whose removal is being sought by Petitioner. According to the petition, Ryan was Raley's secretary for many years and now is Hall's administrative assistant. Verified Petition for Removal and Other Relief, at ¶ 16. DI 1. LaChall and his company, LaChall Lee, LLP, provide accounting services to the trusts and are also Respondents in this litigation. *Id.* at ¶ 17.

of several limited liability companies (“LLC” or “LLCs”), but subsequently had breached their fiduciary duty by amending the LLC agreements to vest their authority in Hall as the sole manager of the LLCs.³ Petitioner’s motion also claimed that there had been an improper sale of property from an LLC to Hall and his wife, and ongoing recreational use of LLC property by Hall and his friends. Following oral argument on February 6, 2017, I recommended denial of the motion for partial judgment on the pleadings because the standard of review required me to draw reasonable inferences on behalf of the non-moving party, and I could not find on the record a sufficient evidence of a breach of fiduciary duty warranting removal of a trustee as a matter of law. Neither party took exception to my

³ Three limited liability companies -- BAR-SGR, LLC, BAR I, LLC, and BAR-RAB, LLC -- were created during the late 1990s through agreements executed by Raley and his wife, individually or in their capacities as trustees of their respective trusts, to hold the family’s assets. On May 24, 2013, the operating agreements of these LLCs were amended to name Hall as the sole manager of each company. Previously, Hall, Ryan, and Hopkins had served as Executive Manager, Division Manager, and Family Manager of BAR I, LLC and BAR-RAB, LLC, and Hall had served as Executive Manager of BAR-SGR, LLC. Respondents’ Opposition to Petitioner’s Motion for Partial Judgment on the Pleadings, Exs. A-E. DI 42. Although Petitioner’s sister, Hopkins, in her capacity as Family Trustee of Bartrust, also had approved the amendment to BAR-RAB, LLC’s operating agreement along with Hall and Ryan, which authorized Hall to serve as sole manager of this company, she is not a party to this litigation. Andrew H. Sauder’s Transmittal Affidavit Supporting Petitioner’s Motion for Partial Judgment on the Pleadings, Ex. E. DI 35.

recommendation and, following *de novo* review, the Court approved an order adopting my findings and conclusions of law on February 23th.⁴

In her motion for a *status quo* order filed on March 13th,⁵ Petitioner alleges that Hall recently revealed his plans to sell the [REDACTED] [REDACTED] for [REDACTED] during a hastily-called meeting with Ryan, Hopkins, LaChall, and Mrs. Raley on March 2nd.⁶ According to Petitioner, [REDACTED] is the biggest cash generator and, perhaps, the single most valuable asset in the family trusts. Petitioner accuses Hall of failing to engage in a fair process of valuing this asset because he refused to obtain a proper appraisal, and the price Hall mentioned, [REDACTED], is likely to be far below the [REDACTED] true value, which Petitioner estimates as [REDACTED].⁷ Petitioner also claims that Hall decided to sell [REDACTED] to spite Hopkins, whose [REDACTED] [REDACTED], because Hopkins had complained about Hall's use of a

⁴ DI 51.

⁵ DI 52.

⁶ In his affidavit, Hall averred that he called a meeting of persons who were affiliated with the ownership and management of BAR-SGR, LLC, which is the owner of the majority of the [REDACTED]. Mrs. Raley is a trustee of her own revocable trust, which is a 12 percent owner of BAR-SGR, LLC. Respondents' Opposition to Petitioner's Motion for a Status Quo Order, Ex. 1 (Affidavit of John Hall). DI 55.

⁷ In her affidavit, Petitioner averred that an [REDACTED] named [REDACTED] had approached her about a potential sale of the [REDACTED], and had informed her "that he could arrange an offer in [REDACTED], with the upper end of that range being more likely." Affidavit of Petitioner Margaret Raley-Ward, dated March 13, 2017. DI 52.

cabin owned by the family trusts. Petitioner learned of this proposed sale after Hopkins, who is Petitioner's sister, informed her of the March 2nd meeting despite Hall's insistence on confidentiality. Petitioner now seeks an order preserving the *status quo* by, *inter alia*, restricting Hall, Ryan, and Hopkins from amending any operating agreement or governance document or from engaging in any transaction with a value in excess of \$50,000 except by written agreement of the parties to this litigation or by Court order.⁸

A *status quo* order is akin to a temporary restraining order, and to obtain this order, a party must demonstrate: (1) that the order will avoid imminent irreparable harm; (2) a reasonable likelihood of success on the merits; and (3) that the harm to the plaintiff outweighs the harm to the defendant.⁹ Petitioner's motion comes at an early stage in the proceedings; therefore, the record is insufficient for me to assess the merits of Petitioner's claims. However, after considering the other two factors, I conclude that Petitioner's motion should be denied because she has failed to make a clear showing of imminent irreparable harm.

Petitioner's motion is accompanied by Petitioner's affidavit dated March 13, 2017, which is based on hearsay, that is, the affidavit consists of Petitioner

⁸ Proposed Status Quo Order. DI 52.

⁹ *Raptor Systems, Inc. v. Shepard*, 1994 WL 512526, at *2 (Del. Ch. Sept. 12, 1994) (citing *Shields v. Shields*, 498 A.2d 161, 166 (Del. Ch. 1985)).

averring what Hopkins told her had transpired during the March 2nd meeting.¹⁰ Although Petitioner was not present at this meeting, Petitioner claims that a sale of [REDACTED] at a price of [REDACTED] is “potentially imminent” and would irreparably harm the trusts by depriving them of a “unique and major asset without even the semblance of an appropriate process.”¹¹

In opposition to this motion, Respondents filed the affidavits of Hall and LaChall, who were present at the meeting, and the affidavit of [REDACTED], the [REDACTED] who had approached both Petitioner and Hall at different times regarding a potential sale of [REDACTED]. According to Respondents’ affidavits, Hall was contacted by [REDACTED] about a possible sale of this [REDACTED] shortly after a regular trustees’ meeting on February 28th. Hall then invited Ryan, Hopkins, Mrs. Raley, and LaChall to a meeting on March 2nd to inform them of his discussion with [REDACTED], and the group talked about issues involved in a possible sale of [REDACTED].¹² Their discussions are briefly summarized in the minutes of the meeting, which was signed by the participants.¹³ Although no concrete price had been offered by [REDACTED], during the meeting LaChall estimated that the value of [REDACTED] was [REDACTED], or possibly [REDACTED] for development purposes [REDACTED]

¹⁰ Affidavit of Petitioner Margaret Raley-Ward, DI 52.

¹¹ Motion for Status Quo Order, at 6. DI 52.

¹² Respondents’ Opposition to Petitioner’s Motion for a Status Quo Order, Ex. 1. (Affidavit of John Hall). DI 55.

¹³ *Id.*, Ex. 1 (Ex. A of Affidavit of John Hall).

because she was attempting to remove the trustee in charge of her family trust.²⁰ Shortly after the March 2nd meeting, Petitioner contacted [REDACTED] and asked whether [REDACTED] had spoken to Hall about a possible purchase of [REDACTED] and whether he had quoted Hall a purchase price.²¹ [REDACTED] averred that he had informed Petitioner that he did not provide Hall with an estimate of the value of [REDACTED] [REDACTED].²²

In her reply, Petitioner changes tack, and argues that if the sale of [REDACTED] [REDACTED] is merely on hold, if no contract for sale has been signed, then there should be no reason for Respondents to oppose a *status quo* order.²³ Petitioner contends that if the Court fails to enter a *status quo* order, the transaction will again become imminent, and she will be left in the dark about Respondents' activities, facing irreparable harm from "the loss of the strategic opportunity to have a proper sale of [REDACTED]".²⁴

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ With her reply, Petitioner provides a second affidavit and an affidavit of her husband in an attempt to demonstrate that [REDACTED] is not a disinterested third party and is participating in this litigation on behalf of "persons who are fighting to be able to sell [REDACTED] before trial." Petitioner's Reply Supporting her Motion for a Status Quo Order, at 8. DI 58. Petitioner's attack on [REDACTED] credibility merely highlights the weakness of her previous affidavit that relied primarily on hearsay.

²⁴ *Id.* at 18.

Regardless of Petitioner's personal belief that a sale of [REDACTED] is intended by Respondents, she has failed to make a clear showing of imminent irreparable harm to the moving party. That a sale of [REDACTED] may occur at some point in the future does not constitute imminent and irreparable injury for the purposes of this motion.²⁵ Therefore, I recommend that the Court deny the motion for a *status quo* order. Because of the nature of this action, I am waiving a draft report. The parties are referred to Court of Chancery Rule 144 for the process of taking exception to a Master's Final Report.

Respectfully,

/s/ Kim E. Ayvazian

Kim E. Ayvazian
Master in Chancery

KEA/kekz

²⁵ *Trilogy Portfolio Co., LLC v. Brookfield Real Estate Fin. Partners, LLC*, 2012 WL 120201, at *6 (Del. Ch. Jan. 13, 2012) ("Potential harm that may occur in the future, however, does not constitute imminent and irreparable injury for the purposes of a TRO or preliminary injunction.") (citing *Am. Gen. Corp. v. Unitrin, Inc.*, 1994 WL 512537, at *4 (Del. Ch. Aug. 26, 1994)).